

Nadler Asks House, Senate Lawmakers to Protect Americans' Constitutional Rights from the PATRIOT Act

Monday, 24 October 2005

Washington Post report details improper investigations by FBI; Congressman calls for restoration of checks and balances against expanded police powers

WASHINGTON, D.C. — Congressman Jerrold Nadler is continuing his effort to protect Americans' constitutional rights from the most pernicious elements of the PATRIOT Act. He has written a letter to his fellow appointees asking for their help in limiting the scope of one of the most troubling provisions of the PATRIOT Act, Section 505. The letter was cosigned by 54 of Nadler's House colleagues from both parties. The PATRIOT Act was reauthorized earlier this year by the House and Senate separately, and lawmakers from the two bodies will convene a conference committee to reconcile the difference between the two versions of the bill. Congressman Nadler is scheduled to be appointed to the conference committee this week.

"As a free society, we ought to be excessively cautious when we expand police powers so greatly," Congressman Nadler said. "We all want our law enforcement officials to be able to track, prevent, and defuse terrorism, but it's absolutely essential that we maintain the American way of life, even as we struggle against those who despise it."

The Washington Post reported yesterday that newly released FBI documents reveal the agency's misuse of PATRIOT Act powers. According to the report, the FBI has conducted at least 13 secret domestic investigations without proper authorization. Read Washington Post staff writer Dan Eggen's article [here](#).

"It's more apparent than ever that the PATRIOT Act needs Congressional oversight," Congressman Nadler continued. "The FBI's own records show that they're abusing their power. If we're not willing to stand up for civil liberties now when it matters most, when will we ever?"

Section 505 authorizes local FBI agents to demand private information using so-called "national security letters" (NSLs) — without getting a judge's approval, and without even presenting evidence that the target is suspected of a crime. The recipient of an NSL, generally a business or library listing the target as a patron, is subject to a gag order, and may not discuss the FBI's demand with anyone. Section 505 provides such broad power to the FBI that it renders largely unnecessary the more broadly known Section 215, the so-called "library provision." Federal authorities have claimed in widely publicized debates over Section 215 that it is hardly ever used, and that the government is not using PATRIOT Act powers to spy on citizens' library usage. In fact, the government is quietly using Section 505 to do just that. The FBI issued an NSL to a library organization in Connecticut, which is now the plaintiff in a lawsuit, *Doe v. Gonzales*, charging that Section 505 is unconstitutional.

Congressman Nadler's letter to the conferees asks them to work with him to set an expiration date — or "sunset provision" — on Section 505. Requiring Congressional renewal of the provision every four years, Nadler argues, is the least lawmakers can do to ensure that NSL powers are used properly. Nadler's letter also asks conferees to lift Section 505's unconstitutional gag order, as the provision has already been found unconstitutional by a federal judge (in *Doe v. Ashcroft*).

The full text of Congressman Nadler's letter to the PATRIOT Act conferees follows:

October 18, 2005

Dear Chairman Sensenbrenner and Ranking Member Conyers:

As you prepare PATRIOT Act Reauthorization legislation, we urge you to include changes to section 505 of the PATRIOT Act to make the use of national security letters constitutional, and to sunset this very intrusive governmental power to guarantee future Congressional oversight.

Section 505 is one of the most problematic provisions of the PATRIOT Act. It authorizes FBI field office directors to issue a "national security letter" to collect almost limitless sensitive personal information on the FBI's own assertion that the request is merely relevant to a national security investigation. National security letters are issued without any judicial approval, and the recipient is barred by law from telling anyone else that the records were demanded.

This invasive and secret search power has been the subject of a court challenge in Federal court in New York. In *Doe v. Ashcroft*, a Federal court judge ruled that the National Security Letter provision of the PATRIOT Act is unconstitutional. The court held that the absence of judicial review violates the Fourth Amendment right to be free from unreasonable searches and seizures, and the statutory prohibition against disclosing the FBI request to any person violates the First Amendment right to freedom of speech.

Although H.R. 3199 and S. 1389 to reauthorize the PATRIOT Act are an improvement over the original act, we believe that the national security letter provisions, as amended by these bills, still gravely undermine our constitutional rights under the first amendment.

Disappointingly, H.R. 3199 and S. 1389 fail to correct the constitutional gag order provision. By treating the affidavit by the government officer as conclusive unless the court finds that certification was made in bad faith, the House and Senate language merely require that judges rubber stamp national security letter requests in all but the rarest cases.

Moreover, neither the House nor the Senate language deal with the fact that section 505 should be sunsetted. Because section 505 is a great expansion of surveillance and police powers and has even been ruled unconstitutional, we should force Congress to revisit the use of these potentially dangerous powers.

We urge you to fix the first amendment constitutional problems with section 505 of the PATRIOT Act concerning national security letters in H.R. 3199 and S. 1389, and to sunset section 505 to guarantee future Congressional review.

Sincerely,

Jerrold Nadler, C.L. "Butch"; Otter, Bernard Sanders, Ron Paul, Debbie Wasserman-Schultz, Rick Boucher, Raul M. Grijalva,

Jim McDermott, Alcee L. Hastings, Doris O. Matsui, Barney Frank, Major R. Owens, Dennis J. Kucinich, Carolyn B. Maloney,

Michael M. Honda, Joseph Crowley, Barbara Lee, Bob Filner, Jose E. Serrano, Charles B. Rangel, Fortney

“Pete” Stark, Tom Udall,

Brian Baird, Gwen Moore, Steven R. Rothman, Edward J. Markey; Edolphus Towns, John B. Larson, Frank Pallone, Jr., James P. Moran,

Sam Farr, Ed Pastor, Tammy Baldwin, Donna M. Christensen, Lynn C. Woolsey, Janice D. Schakowsky, Donald M. Payne, Jesse L. Jackson, Jr.,

Loretta Sanchez, Maurice D. Hinchey, John W. Olver, James P. McGovern, Jerry F. Costello, Wm. Lacy Clay, Zoe Lofgren,

Martin Olav Sabo, Gene Green, Nita M. Lowey, Diana DeGette, Anthony D. Weiner, Rush D. Holt, Howard L. Berman, David E. Price,

Peter A. DeFazio, Carolyn C. Kilpatrick

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